IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 252 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANOJ NAGJI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 252 of 1993

MR DEEPAK M SHAH for Petitioner No. 1

Mr K P Raval, APP for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE D.P.BUCH

Date of decision: 24/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

The appellant-original accused has preferred this appeal under section 374 of the Code of Criminal Procedure, 1973 (for short, 'the Code') challenging the judgment and conviction order recorded against the present appellant on 8.2.1993 by the learned addl.Sessions Judge, Jamnagar in Sessions Case No.125/91i under which the learned Addl.Sessions Judge convicted the appellant for offence punishable under section 302, 364. 420 and 301 of IPC. The appellant was sentenced to suffer R.I. for life for the offence punishable under section 302 of IPC. He was further directed to pay fine of Rs.1,000/- and to further undergo R.I. for two months, in default of payment of fine. For the offence punishable under section 364 of IPC, the appellant was sentenced to suffer R.I. for five years and he was directed to pay fine of Rs.500/- and in default of payment of fine, he was directed to undergo further r.I. for one month. For the offence punishable under section 420 of IPC, the appellant was sentenced to suffer R.I. for three years and was directed to pay Rs.500/-, in default, he was directed to pay Rs.500/-, in default he was directed to further undergo R.I. for one month. For the offence punishable under section 301 of IPC, the appellant was sentenced to suffer R.I. for two years and he was directed to pay Rs.500/- in default of payment of fine, he was directed to further undergo R.I. for one month. The learned Addl.Sessions Judge also directed that all sentences to run concurrently. The facts of the case may be briefly stated as follows:

2. That deceased Kishore Mavji Patel, son of informant Mavji Patel was an unemployed young boy. The present appellant told his father-the informant that he would arrange for some employment for the deceased. The father was therefore inclined and hence induced to pay certain amounts to the appellants with a view to see that deceased Kishore would get some secured job. Different amounts were paid on different dates and after getting the said amount, the appellant asked the father - Mavji Patel to send the son i.e. deceased Kishore with him. Ultimately, the son was sent with the appellant to Chandigarh for getting a job in defence service. After some time, there was no information of the deceased. However, it was learnt that the present appellant was in custody and, therefore, he was contacted in the jail. The appellant had told the father that he should enquire at Chandigarh for the deceased at the address given by the appellant to the father. Enquiries were made but he was not found there and there was no further information of the son. Ultimately it is found that even the deceased did not convey any message to the father and,

therefore, the father never knew about the whereabouts of the deceased.

3. In the aforesaid fact situation, the father suspected about something wrong and therefore, he filed a FIR before the police. Thereafter the father moved from place to place in search of deceased Kishore but he was not traceable. Therefore, the father submitted a petition before this court and this court passed an order to the effect that the investigation be undertaken by the CID. Accordingly, the CID took over the investigation of the case. During the course of the said investigation, some bones, cloths, bag and other articles of the deceased were traced out and from the recovery of those articles, it was found that they belonged to the deceased and the appellant had actually taken away the deceased with him and had killed him and had abandoned the deadbody of the deceased in a lonely place.

4. Therefore, the appellant was arrested and investigation proceeded ahead. At the conclusion of the investigation, the appellant was charge-sheeted. The learned Magistrate found that the offence against the appellant was actually triable by the court of Sessions and, therefore, the case was committed to the Court of Sessions. There it was registered as Sessions Case No.125/91. The learned Judge provided the papers to the appellant. Charge was prepared and framed at Exh.17 on 19.2.1992. It was read over and explained to the appellant. The appellant pleaded not guilty to the said charges and, therefore, the evidence was recorded. At the conclusion of the evidence, further statement of the appellant was recorded under section 313 of the Code. Arguments were heard and at the conclusion of the trial, the learned Judge found that the prosecution had proved the case against the appellant that the appellant had actually cheated father of the deceased. That the appellant had taken away the deceased with him for illegal purpose. That the appellant had committed murder of the deceased and he had also played mischief with the evidence and thereby committed the said offences. After hearing the appellant on the point of quantum of punishment, the learned Judge awarded punishment to the appellant as aforesaid.

5. Being aggrieved by the said judgment and conviction order of the trial court, the appellant has preferred this appeal before this court. It has been contended here that the learned trial Judge has committed serious error in appreciation of evidence. That the entire case was based on circumstantial evidence and each

link has not been properly established. That there was no material to convict the appellant for the serious offences for which he was convicted. That on the while, the judgment and conviction order against the appellant are illegal and erroneous and deserve to be set aside. The appellant, therefore, prays that the present appeal be allowed, the judgment and conviction order be set aside, the appellant be acquitted for the aforesaid offence and he be set at liberty forthwith.

6. On receiving the appeal through the jail, it was ordered to be admitted but bail was refused. Learned Advocate Mr Deepak M Shah was appointed to argue the matter on behalf of the appellant. We accordingly heard the arguments advanced by Mr Deepak M Shah for the appellant. We have also heard the arguments advanced by Mr K P Raval, learned APP for the State. In fact, they have taken us through the oral and documentary evidence as well as the findings and reasonings recorded by the learned trial Judge during the course of his lengthy judgment. On going through the evidence and the judgment on record, we find no justification in not agreeing with the findings and reasonings recorded by the learned trial Judge. We also find that the learned Judge was perfectly justified in convicting the appellant. There is no reason to differ from the view adopted by the learned trial Judge in appreciating the evidence and in convicting the appellant. Any way, the matter rests on circumstantial evidence and, therefore, it would be appropriate for us to go through the evidence and reasonings of the trial court in order to ascertain as to whether the conviction has been properly recorded against the appellant.

7. In order to prove the case against the appellant, the prosecution has examined as many as 28 witnesses. Mavji Patel, Exh.26 is the main witness. He has deposed before the trial court that deceased Kishore was his first son, that the appellant used to come to his village very often and he used to tell him that he was serving in Navy and he could provide a job to the deceased in Navy, since he had good relations with the officers in the Navy and, therefore the job could be provided to the deceased by use of the aforesaid relations, good office and goodwill. He also said to him that for getting the job, some amount will have to be paid. Accordingly, as per the say of the witness, the appellant was paid Rs.7000/-, Rs.1400/-, Rs.400/- and Rs.5000/- on different dates. So these were the amounts paid to the appellant by the father of the deceased for securing a job for the deceased. His evidence gets support from the FIR and

other circumstance on records and hence there is no reason to disbelieve the said case narrated by the witness from the beginning.

8. Then this witness has said that on 21.2.1992, the appellant had taken the deceased with him for arranging a job for the deceased and both had gone together at about 11.30 a.m. That at that time, the appellant had told him that they were going to Chandigarh. It is also deposed by the witness that the son had taken certain cloths, towels, wrist watch etc. in a bag with him. The witness has further stated that there after there was no information about the son and, therefore, some enquiries were made but there was no fruitful result. The witness further has deposed that about two months thereafter, an information was received that the present appellant was arrested in connection with some offence and, therefore, he went to the jail at Jamnagar with Gopalbhai and enquired about the deceased. There the appellant told him that the deceased was at Chandigarh and his address was also given. The said address given by the appellant was produced by the witness in his evidence. Thereafter, the witness has further said that a telegram was sent at the aforesaid address but there was no reply to the said telegram and, therefore, he suspected something wrong and hence filed FIR Exh. 87. These facts were also proved by the prosecution. Therefore, there is no reason to disbelieve that the contents of the FIR as well as the evidence of the informant before the Court. The witness further said that thereafter the matter was investigated by CID on account of the order passed by this Court in a petition filed by him. The witness has further stated that the bones, cloths, bag etc. of the deceased were seized by the police and the cloths etc were shown to him and he was able to identify them. That, really those cloths and other articles were of the deceased and he had actually identified those cloth and other articles as belonging to the deceased. Even before the court, this witness has identified the bag of the deceased, the wrist watch of the deceased, a sweater, a shawl, a towel, a pant, shirt etc. of the deceased and deposed that those cloths and other articles really belonged to the deceased. So those articles were identified by him before the court also. Since these articles were supplied by him to the deceased, he was in a position to identify them.

9. He has been cross examined at length before the trial court at length by the learned Advocate for the defence also. He could identify the cloths and other articles. Naturally, the deceased was not employed and,

therefore, the cloths, watch, bag etc. were purchased by the father and, therefore, the father was the best witness to identify the cloths and other articles of his son. There is no reason to disbelieve this evidence of the said witness. His evidence remained unshaken during cross examination also.

10. Another witness Bharatbhai Exh.29 also supports the say of the father of the deceased. He also says that the appellant had told his father that if Rs.7000/- were paid, then arrangement would be made for a job in Government service. Therefore, even the modus operandi of the appellant gets further corroborated by the evidence of this witness. Almost similar is the evidence of Mansukh Natha Exh.30. The witness has not fully supported the case of the prosecution. He has identified the appellant before the court. Harkant Mohanlal Exh.31 was working as Head Master in a School at village Theba. He has deposed that the deceased was studying in his school. He was admitted to 8th Standard and he had left the School on 31.5.1987 for appearing in examination of 10th standard. He also produced relevant papers from his records with respect to the deceased as well as with respect to the present appellant to show the birth dates of the two persons. The said certificate shows that birth date of the deceased was recorded as 20.4.1970. This can be gathered from Exh.32.

11. Gopalbhai at Exh.35 also says that the appellant had contacted him and told him that if he could pay Rs.7,000/- then he would arrange for the job for his son. He has also stated that the father of the deceased had told him that arrangement was made for service of the deceased and the appellant had taken him with him. Thereafter, he learnt that the appellant was arrested in connection with some cheating offence and, therefore, he had told the father of the deceased about the same and both of them had gone to the jail at Jamnagar to meet the appellant. He has also stated that the appellant had given the address of the deceased which is produced at Exh.36. Then contact was made at the said address but the deceased was not traceable according to this witness also. This witness completely corroborates the testimony of the father of the deceased.

12. Then there is evidence of Dr. Harimohan Mangal at Exh.37. He was working as Associate Professor in the Forensic Department of M P Shah Medical College, Jamnagar. He is holding a degree of M.D. (Forensic). He had examined the dead body of the deceased handed over to him. He has given evidence to the police that those

bones were bones of human being and they were of male person. He could identify them to be those bones examined by him. Evidence of this witness clearly goes against the appellant. The witness was cross examined on behalf of the appellant but nothing fruitful could be obtained from his evidence. A suggestion was made that the bones were of some animal. But the witness negatived the said suggestion. Report of the post mortem has been produced at exh.40.

13. Mukundrai Prabhulal Exh.53 is a panch witness. According to him, he was taken to a place near village Theba. They could go up to some distance in the police vehicle. but thereafter, it was not a motorable road. Therefore, they had to go on foot. The witness further said that some bones were traced out at the instance of the appellant from a ditch in the said lonely place. There was a jaw of broken teeth and other bones traced out from the said ditch at the instance of the police. A bush shirt was also produced from the said place. Some part of it was found to be stained with blood. It was dusty. Some bones of skull were also traced out from the said place. Some photographs were taken and panchnama was drawn. He had identified the muddamal articles in the court also. This witness had proved certain parts of the factual aspect of the panchnama and had also proved his signature on those panchnamas. Discovery panchnama has been produced at pages 54, 55 and 56. They support the evidence of the said witness. This shows that some muddamal articles were traced out at the instance of the appellants. These are material and circumstantial piece of evidence and, therefore, this is an important link in the said chain of evidence.

14. Another witness Haresh Dan Gadhvi Exh.62 has proved the fact that the father of the deceased has sent a telegram, as deposed by him.

15. Mahesh Shankarlal Exh.65 was working as a jailor in the District Jail, Jamnagar and he has produced record of the jail in order to prove that the appellant was detained in his jail as a prisoner and the father of the deceased Mavji Patel had visited him on 29.4.1991. He has produced relevant copies of the same from the Register Exh.67. This proves the factual aspect given by the father of the deceased that he had met the appellant in the jail at Jamnagar. Chaturaben Exh.68 has also supported the evidence of the father of the deceased saying that she was able to identify the cloths, sweater, wrist watch and bag of the deceased. Incidently, the father and the witness both have said that though the

wrist watch is the same, the belt is not the original one but it seems to have been substituted for the original belt. So this witness support, the case of the father of the deceased to a great extent. She has also deposed that the deceased had gone with the appellant and thereafter, his whereabouts were not known. It is further shown from the record that the watch which has been attached on the spot was sold and purchased with the help of the appellant.

16. Then, witness, Gova Devji Exh.75 is a panch witness. It seems that the appellant had discovered certain muddamal articles from his own residence. The witness has deposed that a towel, shawl, sweater, a pant and a belt were seized from the house of the appellant at his instance.

17. The watch was also recovered. Mansukh Dharmshi Exh.76 has deposed before the trial court that Muddamal watch was purchased by him from the appellant in a sum of Rs.200/-. He had identified the said watch to be a watch purchased by him from the appellant. Now this was the watch which was with the deceased at the time when the deceased left village Theba in the company of the appellant. Thereafter, the deceased died and his watch was found with the witness. In that view of the matter, it was open to the appellant to explain as to how he came to be in possession of the watch in question. This question has not been answered by him. This evidence links the appellant with the death of the deceased. Lalji Keshavji Exh.77 has deposed before the Court below that he had purchased one watch from Mansukh in a sum of Rs.170/-. He says that the said watch had been seized from him by the police. It is the theory of the prosecution that the watch of the deceased was found as aforesaid and it proves the attachment of the appellant with the watch which belonged to the deceased. Natha Ratna Exh.78 is the panch witness who was present at the time when the panchnama was drawn with respect to the field of Natha and other places around his field.

18. Dinesh Babulal Exh.81 is the witness from whom cloths of the deceased were attached by the police. The witness had deposed that the said cloths were given to him by the appellant. This again shows the link of the appellant with the cloths of the deceased at the time of the offence. Gajmal Dungar was working as Police Station Officer in Panchkoshti A Division Police Station. He has tendered evidence at Exh.85. He has deposed that he had made entry in the register showing that the deceased was not traceable. This entry was recorded at the instance

of the information received by the police station. Head Constable Muktaben at Exh.88 has produced the FIR and inquest report in support of the case of the prosecution.

19. From the above evidence, it is clear that the witnesses have tendered evidence in a most natural manner. Their evidence was consistent and the trial court found it proper to rely upon the said evidence. It is to be noticed that the trial court had an opportunity to note the demeanor of the witnesses while tendering evidence from the witness box. The witnesses corroborated the case of other witnesses and there is no reason to disbelieve the evidence tendered by those witnesses. In above view of the matter, when there is no reason to discard the evidence of those witnesses which is even acceptable, then it goes without saying that the appellant did demand and got money from the father of the deceased on different instalments. It is also proved that the appellant had demanded and obtained the said amount from the father of the deceased with a view to cheat him under the pretext to provide job to the deceased and ultimately the amount was collected and the appellant had taken the deceased with him. This means that the appellant was last seen with the deceased in February, 1991 and there is no explanation tendered by the appellant as to what happened to the deceased after he had taken the deceased with him. Efforts were made to show that the deceased was in Chandigarh but the deceased was not found in Chandigarh and even today, his whereabouts are not known. This shows that the appellant, under the pretext of getting a job for the deceased, had first taken the deceased with him and then killed him and his link with the cloth, link with the bag and watch of the deceased and the evidence showing that he had led the police to the spot from where the said articles could be traced out also goes to show that the appellant did kill the deceased after taking him with him.

20. Now, the things are very clear that the appellant had taken the deceased with him and thereafter, the whereabouts of the deceased were totally lost. The appellant has not been able to explain as to what happened to the deceased after the deceased was taken with him for going to Chandigarh.

21. It is also clear that the appellant had produced a bag from his house. The said bag belonged to the deceased. As per the evidence on record, there were certain cloths in the said bag including a towel, a

shawl, a sweater etc. It is proved on record that these were belonging to the deceased. There is ample evidence to believe the said fact to be true. Apart from the evidence of father, even Chaturaben also identified the said articles. When these articles including cloths and bags have been found in possession of the appellant, it would be for the appellant to explain how he came to be in possession thereof. However, the appellant has not been able to assign a single reason for coming in possession of the cloths and other articles belonging to the deceased.

22. Then, his conduct at different levels is also relevant and material. At first instance, he took the deceased with him under the pretext that he would provide job to him. Then, he collected money for providing job to the deceased and similarly attempted to collect money from others. Then, he gave a false explanation to the father of the deceased about the whereabouts of the deceased that the deceased was actually at Chandigarh at the address given by the appellant to the father of the deceased.The deceased was not found there also. The belongings of the deceased were recovered from him or through him. He tendered no explanation. These are the circumstances which weighed with the trial court in coming to a decision that the appellant was guilty of the offences with which he was charged.

23. We are aware of the position that the case is based on circumstantial evidence. Therefore, each link is required to be established to complete the chain. The learned Judge has given cogent reasons for accepting the evidence of the witness and for holding the appellant guilty for the charges with which he was charged. The learned Judge was therefore, justified in relying upon the evidence of the prosecution witnesses. He was also right in holding the appellant guilty for the aforesaid charge. Hence we find that there is no reason to take a different view from the view adopted by the learned Judge. The learned Judge has discussed the evidence elaborately and at a great length. Each and every witness has been taken into consideration. The learned Judge has found that each link has been completely established to complete the chain. We are of the view that the appellant is proved to be guilty for the offence with which he has been charged. Learned advocate for the appellant has taken pain in arguing that the links are missing but he was unable to show us a single link which could be said to be missing from the chain of circumstantial evidence. Even with respect to the conduct of the appellant, no explanation was assigned by

the learned Advocate for the appellant. In that view of the matter, we are unable to agree with the argument advanced by the learned Advocate for the appellant that the chains are missing and, therefore, the appellant should be acquitted and at least benefit of doubt should be extended to him. In fact, chain of circumstances establishes that the appellant and appellant alone has committed the offence in question and the prosecution has proved the case beyond reasonable doubt. In the facts and circumstances of the case, there is no merit in the present appeal and, therefore, it deserves to be dismissed.

In above view of the matter, this appeal is ordered to be dismissed. The impugned judgment and conviction order recorded by the learned trial Judge are hereby confirmed.

24.12.2001 [B J Shethna, J.] [D P Buch, J.]
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